

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JASON C. SHERMER and MATTHEW J. HOLLAND

Application No. 10/072,435

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences (hereinafter the “Board”) on February 23, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner. The matters requiring attention prior to docketing are identified below:

On August 11, 2006, Appellants filed an Appeal Brief. On September 11, 2006, the Examiner mailed a “Notification of Non-Compliant Appeal Brief (hereinafter “Notification”). Subsequently, on September 7, 2006, the Examiner mailed an Examiner’s Answer in response to Appellants’ Appeal Brief. According to the Manual of Patent Examining Procedure (MPEP) 1205.03 (8th ed., Rev 4, October 2005). Appellants have **one month or thirty days** from the mailing date of the Examiner’s

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Notification mailed on September 11, 2006 to file an amended Appeal Brief. With respect to Appellants' Appeal Brief filed on August 11, 2006, Appellants have yet to respond to the Notification and, therefore, have not filed an amended Appeal Brief.

In addition, Appellants filed a Reply Brief on October 30, 2006. On November 21, 2006, the Examiner mailed a second Examiner's Answer in response to Appellants Appeal Brief filed on August 11, 2006. It appears from a review of the record that the Examiner has not responded to Appellants' Reply Brief. Moreover, in order for this application to not become abandoned, Appellants must show good cause as to why they did not file an amended Appeal Brief in response to the Examiner's Notification of September 11, 2006.

Accordingly, it is

ORDERED that the application is returned to the Examiner for resolution of the following issues:

(1) to notify Appellants in writing as to status of the Examiner's Notification filed on September 1, 2006,

(2) to obtain clarification from Appellants as to why no amended Appeal Brief has been filed, or for the Examiner to abandon the application;

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(3) to properly respond to Appellants Reply Brief filed on
October 30, 2007, and

(4) for such further action as may be appropriate.

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By: _____
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PJN:clj

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